

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

<b>DEIDRA BARNES</b> Claimant	)	
	)	
V.	)	
	)	
<b>GEARY COUNTY</b>	)	
Respondent	)	Docket No. 1,071,180
	)	
AND	)	
	)	
<b>KANSAS WORKERS RISK COOP</b>	)	
Insurance Carrier	)	

**ORDER**

**STATEMENT OF THE CASE**

Respondent and its insurance carrier (respondent) requested review of the August 18, 2015, preliminary hearing Order entered by Administrative Law Judge (ALJ) Rebecca A. Sanders. Jeff K. Cooper of Topeka, Kansas, appeared for claimant. Ronald J. Laskowski of Topeka, Kansas, appeared for respondent.

The ALJ found claimant is entitled to medical care for her left upper extremity and ordered respondent to produce a list of two qualified physicians from which claimant may choose one for authorized treatment.

The record on appeal is the same as that considered by the ALJ and consists of the July 22, 2015, Independent Medical Evaluation (IME) by Dr. J. Clinton Walker and the pleadings contained in the administrative file.

**ISSUES**

Respondent argues claimant failed to prove the prima facie elements necessary to establish a compensable claim. Respondent maintains there is no evidence supporting an order for medical treatment, and the ALJ's Order should be reversed.

Claimant contends the Board lacks jurisdiction to review respondent's appeal. Alternatively, claimant argues the ALJ's Order should be affirmed.

The issues raised by the parties for the Board's review are:

1. Does the Board have jurisdiction to review respondent's appeal?
2. Did claimant suffer a personal injury arising out of and in the course of her employment?

#### **FINDINGS OF FACT**

Claimant worked for respondent beginning in 2000 as a legal secretary. Claimant began having pain in her right wrist in 2013. She was initially treated conservatively before undergoing surgery to her right wrist. Claimant then began having similar symptoms in her left wrist in March 2014, approximately six months after leaving respondent. Claimant currently works as an administrative assistant for the State of Kansas performing similar work activities.

In an Order dated May 12, 2015, the ALJ requested an IME from Dr. J. Clinton Walker to provide opinions regarding treatment recommendations. Dr. Walker examined claimant's wrists on July 6, 2015.

Dr. Walker reviewed claimant's medical records, history, took x-rays and performed a physical examination. He assessed claimant with bilateral DeQuervain's tenosynovitis and status-post right first dorsal extensor compartment release. Dr. Walker determined claimant was at maximum medical improvement for her right wrist and found it extremely unlikely she would benefit from additional treatment. He suggested claimant use her right wrist as tolerated, and further noted she may get symptomatic benefit from occasional splinting as needed. Regarding claimant's left wrist, Dr. Walker wrote:

In regards to the left wrist - [claimant] is not at maximum medical improvement. She would be a candidate for the standard treatments for DeQuervain's tenosynovitis including splinting, ice, NSAIDs, corticosteroid injection, and she may require surgical release if symptoms persist. In my medical opinion, her work related activities are likely the prevailing cause of the left wrist DeQuervain's tenosynovitis symptoms. This is the same diagnosis that she had in the right wrist and she started to have symptoms while performing similar job activities as she did with the right wrist. According to the records and her own report, the left sided symptoms occurred when she was working for the State of Kansas as an administrative assistant in the public defender's office. In my medical opinion, her work at this position is the prevailing cause of the left sided symptoms and these symptoms are not related to her prior employment with [respondent].<sup>1</sup>

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<sup>1</sup> Walker IME (July 22, 2015) at 5.

**PRINCIPLES OF LAW**

K.S.A. 2013 Supp. 44-501b(c) states:

The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

K.S.A. 2013 Supp. 44-508(h) states:

"Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record unless a higher burden of proof is specifically required by this act.

K.S.A. 2013 Supp. 44-534a(a)(2) states, in part:

A finding with regard to a disputed issue of whether the employee suffered an accident, repetitive trauma or resulting injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board.

K.S.A. 2013 Supp. 44-508(f)(2)(B) states, in part:

An injury by accident shall be deemed to arise out of employment only if:

- (i) There is a causal connection between the conditions under which the work is required to be performed and the resulting accident; and
- (ii) the accident is the prevailing factor causing the injury, medical condition, and resulting disability or impairment.

K.S.A. 2013 Supp. 44-508(g) states:

"Prevailing" as it relates to the term "factor" means the primary factor, in relation to any other factor. In determining what constitutes the "prevailing factor" in a given case, the administrative law judge shall consider all relevant evidence submitted by the parties.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>2</sup> Moreover, this review of a preliminary hearing order has been determined by only one Board Member, as permitted by K.S.A. 2014 Supp. 44-551(l)(2)(A), as opposed to being determined by the entire Board as it is when the appeal is from a final order.<sup>3</sup>

### **ANALYSIS**

#### **1. Does the Board have jurisdiction to review respondent's appeal?**

Claimant argues the Board lacks jurisdiction to review the ALJ's preliminary hearing Order. K.S.A. 2013 Supp. 44-534a(a)(2) specifically grants jurisdiction to the Board to review the issue of whether a claimant suffered an injury arising out of and in the course of employment. Also, the Board has held that when the underlying point of contention is whether claimant's accident was the prevailing factor in causing the medical condition, the Board has jurisdiction under K.S.A. 2013 Supp. 44-534a.<sup>4</sup> The Board has jurisdiction to review this appeal.

#### **2. Did claimant suffer a personal injury arising out of and in the course of her employment?**

This case is unusual in that there was no evidentiary hearing. Claimant did not testify and the conflicting medical evidence leading to the court-ordered IME is not before the Board to review. The only evidence in the record is Dr. Walker's IME report.

Dr. Walker specifically stated in his report that, based upon the records and claimant's own report, claimant's left upper extremity complaints are related to claimant's work with the State of Kansas, not respondent. Additionally, Dr. Walker identified claimant's work at the public defender's office to be the prevailing factor for claimant's left-sided symptoms. Based upon the limited available evidence, claimant has failed to prove personal injury to her left wrist arising out of and in the course of her employment with respondent.

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<sup>2</sup> K.S.A. 44-534a; see *Quandt v. IBP*, 38 Kan. App. 2d 874, 173 P.3d 1149, rev. denied 286 Kan. 1179 (2008); *Butera v. Fluor Daniel Constr. Corp.*, 28 Kan. App. 2d 542, 18 P.3d 278, rev. denied 271 Kan. 1035 (2001).

<sup>3</sup> K.S.A. 2014 Supp. 44-555c(j).

<sup>4</sup> *Damron v. Cobalt Boats*, No. 1,063,457, 2014 WL 3055456 (Kan. WCAB June 24, 2014); *Wilson v. Triangle Trucking, Inc.*, No. 1,063,281, 2013 WL 6920087 (Kan. WCAB Dec. 20, 2013); *Kornmesser v. State of Kansas*, No. 1,057,774, 2013 WL 3368484 (Kan. WCAB June 14, 2013).

**CONCLUSION**

The Board has jurisdiction to review this appeal. Claimant failed to prove personal injury to her left wrist arising out of and in the course of her employment with respondent. All other issues are moot.

**ORDER**

**WHEREFORE**, it is the finding, decision and order of this Board Member that the Order of Administrative Law Judge Rebecca A. Sanders dated August 18, 2015, is reversed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of October, 2015.

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HONORABLE SETH G. VALERIUS  
BOARD MEMBER

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Rebecca A. Sanders, Administrative Law Judge